Agenda Item Form

2004

Districts Affected: All Dept. Head/Contact Information: Jorge C. Magaña, MD, FAAP, Director Type of Agenda Item: Resolution ☐Staffing Table Changes ☐ Board Appointments ☐Tax Refunds □ Donations ☐ Tax Installment Agreements ☐ Item Placed by Citizen ☐Budget Transfer RFP/ BID/ Best Value Procurement ☐Bldg. Permits/Inspection ☑Introduction of Ordinance Application for Facility Use Contract/Lease Agreement Grant Application ☐Interlocal Agreements Other ___ **Funding Source:** ☐General Fund Grant (duration of funds: ____ Months) Other Source: _ Legal: ☐ Legal Review Required ☐ Approved Attorney Assigned (please scroll down): Teresa Garcia Denied Timeline Priority: ☐High Medium Low # of days:____ Why is this item necessary: Public Hearing to be held on March 23, 2004 Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings: **Statutory or Citizen Concerns: Departmental Concerns:**

Agenda Date: March 9,



El Paso City-County Health and Environmental District

Jorge C. Magaña, M.D., F.A.A.P., Director Mark A. Everett, M.B.A., Public Health Administrator

March 4, 2004

TO:

City Clerk

FROM:

Jorge C. Magaña, M.D., F.A.A.P., Director

SUBJECT:

Introduction of Ordinance - Chapter 9.12

Food and Food Handling Establishments

SCHEDULED: City Council Regular Agenda for March 9, 2003

An Ordinance amending Sections of Title 9 (Health and Safety). Chapter 9.12 (Food and Food Handling Establishments). The penalty being as provided in Section 9.12.890 of the El Paso Municipal Code.

Scheduled for Public Hearing on March 23, 2004.

ORDINANCE NO.	_
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AN ORDINANCE AMENDING SECTIONS OF TITLE 9 (HEALTH AND SAFETY), CHAPTER 9.12 (FOOD AND FOOD HANDLING ESTABLISHMENTS). THE PENALTY BEING AS PROVIDED IN SECTION 9.12.890 OF THE EL PASO MUNICIPAL CODE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

1. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Article I. (General Provisions), Section 9.12.010 (Definitions) of the El Paso Municipal Code shall be and hereby is amended to revise, add or delete existing definitions as follows:

"Booklet" SHALL BE REVISED TO READ AS FOLLOWS:

"Booklet" means literature developed and/or printed by the food inspection program for sale to the public.

"Caterer" SHALL BE REVISED TO READ AS FOLLOWS:

"Caterer" means a person whose business is to provide food services at private social events. Within the meaning of this code, catering is a function of the restaurant business and such food services are provided at non-restaurant locations. A caterer may not engage in the business of a temporary, seasonal or recurrent establishment without first obtaining the applicable permit.

"Concessionaire" SHALL BE DELETED.

"Establishment" SHALL BE REVISED TO READ AS FOLLOWS:

"Establishment" means food product and food service establishments, including temporary, recurrent, seasonal, mobile, nonprofit and care facilities.

"Event" or "Celebration" SHALL BE REVISED TO READ AS FOLLOWS:

"Event" or "Celebration" means a publicly accepted social event or celebration such as parades, walkathons, authorized street sales, fiestas, holidays, bazaars and religious celebrations. An event cannot be more than fourteen consecutive days.

"Private social event" SHALL BE ADDED AS FOLLOWS:

"Private social event" means an event not freely available to the general public; including but not limited to weddings, birthday parties, anniversaries, company functions, etc. Attendance is by formal invitation only with no cost to the invitee and cannot be more than fourteen consecutive days.

"Recurrent food establishment" SHALL BE REVISED TO READ AS FOLLOWS:

"Recurrent food establishment" means a food establishment that operates for a period of one year in conjunction with an approved flea market on Saturdays, Sundays and National Holidays as observed by the city only.

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"Seasonal food establishment" SHALL BE ADDED AS FOLLOWS:

"Seasonal food establishment" means a food establishment that operates for a period of no more than six consecutive months in conjunction with a regularly occurring event, on a weekly or monthly basis, but not occurring for more than five consecutive days, which event has received necessary approval from the City of El Paso. This type of permit can't be renewed for six months from expiration date.

2. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Article II. (Permits and Licenses), Section 9.12.020 (Required—Transfer-Display), Section 9.12.030 (Permit—Application—Contents), Section 9.12.040 (Permit-Application—Issuance approval), Section 9.12.050 (Permit—Contents), Section 9.12.060 (License-Permit prerequisite—Fee), Section 9.12.070 (License—Fee—Term) and Section 9.12.125 (Fee schedule for other required fees) of the El Paso Municipal Code shall be and hereby are amended to revise, add or delete existing sections and/or subsections as follows:

Section 9.12.020 Required—Transfer—Display. (A) and (C) SHALL BE REVISED TO READ AS FOLLOWS:

A. No person shall operate a food establishment who does not have a valid permit or authorization issued by the regulatory authority and a valid license issued by the city. A Private Social Event is exempt from the requirements of this Chapter. Neither a permit, authorization nor license issued under this article is transferable from one person to another nor from one location to another. The permit, authorization and license as required shall be posted in every food establishment in a location conspicuous to consumers.

C. This chapter does not relieve a person from any requirements of any other part of the El Paso Municipal Code.

9.12.030 Permit—Application—Contents. (F) SHALL BE REVISED TO READ AS FOLLOWS:

F. In addition to the above requirements, any mobile food establishment must provide the license number and vehicle registration number for the proposed mobile food establishment; and any recurrent, seasonal, temporary, mobile, or nonprofit organization must provide a schedule of all dates, times and locations for proposed food operation.

9.12.030 Permit—Application—Contents. (G) SHALL BE ADDED AS FOLLOWS:

G. The regulatory authority must receive a completed temporary food establishment application and the applicable fee(s) at least three working days prior to the date of any event. If the required application and fee(s) are submitted less than three working days prior to the date of any event, a late penalty will be imposed equal to twice the applicable fee(s).

9.12.040 Permit--Application—Issuance approval. (D)

SHALL BE ADDED AS FOLLOWS:

D. An application-processing fee shall be assessed at the time of application submittal. Such fee is valid for one year. Subsequent processing fees shall be assessed for each year the application remains pending with the regulatory authority. The application shall be voided if processing fees are not maintained current. Temporary and Seasonal applications are exempt from the processing fee.

9.12.050 Permit--Contents. (D)

SHALL BE REVISED TO READ AS FOLLOWS:

D. Restricted to prepackaged food only, no potentially hazardous food;

9.12.060 License--Permit prerequisite--Fee.

SHALL BE REVISED TO READ AS FOLLOWS:

To obtain a license, the permittee shall present the permit to the city license section and pay the fee established by Section 9.12.070. Due to the nature of the operation of mobile, recurrent, seasonal and temporary food establishments, license fees must be paid at time of application.

9.12.070 License—Fee--Term. (C), (D), (F), (H), (I), (J), (K), (M) and (P) SHALL BE REVISED TO READ AS FOLLOWS:

- C. Fees for unexposed temporary, seasonal and recurrent establishments.
 - 3. Seventy five dollars for a seasonal establishment handling unexposed food.
- D. Fees for exposed temporary, seasonal and recurrent establishments.
 - 3. One hundred fifty dollars for a seasonal establishment handling exposed food.
- J. Reserved.

K. An annual license fee for all other establishments is based on overall square footage of the establishment building according to the following schedule:

0. Under 200 Square Feet -- Pre-packaged and no potentially hazardous food

		\$ 75.00
1.	Under 3,000 Square Feet	\$150.00
2.	3,001 to 6,000 Square Feet	\$300.00
3.	6,001 to 9,000 Square Feet	\$450.00
4.	9,001 or more Square Feet	\$600.00

Original license fees will be based on the square footage of the establishment building at the time it commences operation. Fees will be adjusted if the building is remodeled, and fees shall be increased or decreased according to any change in square footage category of the establishment building;

- M. The term of licenses issued under this chapter and each renewal thereof shall be as follows:
- 1. For a temporary establishment the term shall not exceed fourteen consecutive days,
- 2. For a recurrent establishment the term shall not exceed one year and operation is restricted to flea markets on Saturdays, Sundays and National Holidays as observed by the City of El Paso only,
- 3. For a seasonal establishment the term shall not exceed six consecutive months and operation is restricted to locations approved by the City of El Paso. This type of permit cannot be renewed for six months after the date of expiration.
- 4. For all other licenses issued after the effective date of the ordinance codified in this section the license shall begin on the date of issuance or renewal and end three hundred sixty-five days later or upon the expiration of the underlying health permit, whichever is sooner;
- P. One hundred fifty dollars per year for any care facility in which care is provided for twenty-four hours a day for nine to eighteen care recipients.

9.12.125 Fee schedule for other required fees. SHALL BE REVISED TO READ AS FOLLOWS:

\$45 H. Application Annual Processing Fee J. Condemnation Fee 1. Under 500 lbs No Charge 2. 500 lbs to 1,000 lbs \$ 50 3. 1,000 lbs to 3,000 lbs \$100 4. 3,000 to 5,000 lbs \$200 5. 5,000 to 10,000 lbs \$300 6. 10,000 to 25,000 lbs \$400 7. 25,000 to 40,000 lbs \$500 8. Over 40,000 lbs \$600

- K. Fire/Accident Investigation
 - 1. \$50 per hour per inspector with a minimum one (1) hour charge.
 - 2. Any additional fee shall be assessed on an hourly basis or any portion thereof.
- L. Hazard Analysis Critical Control Point Plan Review Fee

1. Originating Establishment (preparation)	\$50
2. Receiving Establishment (ready-to-eat)	\$25
M. Mobile Food Establishment Sticker	\$10

4. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Article IV. (Food Protection Management Certification), Section 9.12.220 (Required), Section 9.12.230 (Issuance – Eligibility - Term), Section 9.12.240 (Application -

Contents), and Section 9.12.250 (Renewal – Fee) of the El Paso Municipal Code shall be and hereby are amended to revise, add or delete existing sections and/or subsections as follows:

9.12.220 Required.

SHALL BE REVISED TO READ AS FOLLOWS:

Persons desiring to work in an establishment as food protection management personnel, as defined in Section 9.12.010 shall obtain a food protection management certification card from the regulatory authority within sixty days from the day of his or her employment, or successfully complete and provide proof of completion of a food protection management certification program approved by the regulatory authority. The person(s) responsible for food operations within a care facility and whose primary duties include, but are not limited to, supervision of kitchen personnel, food handling, food preparation and storage, is required to obtain a food protection management certification card. Persons providing proof of completion of a food protection management certification program, approved by the regulatory authority, must present said certification to the regulatory authority and pay a thirty-five dollar records management fee.

9.12.230 Issuance – Eligibility - Term.

SHALL BE REVISED TO READ AS FOLLOWS:

A food protection management certification card shall be issued to each person who successfully completes the food protection management certification program conducted by the regulatory authority. Such card is valid for a three-year period and shall be renewed within sixty days of the expiration date to remain valid. Food protection management personnel who fail the food protection management certification test shall be required to retake and successfully pass the food protection management certification test within thirty days, or he or she will be required to retake the food protection management certification course and pay the fee as described in Section 9.12.240(B). Completion of a recognized Food Protection Management Course will be valid for time period indicated on the certificate. The regulatory authority will issue a food protection management certification card.

9.12.240 Application - Contents.

SHALL BE REVISED TO READ AS FOLLOWS:

To obtain a food protection management certification card or to register a separate recognized certification, an individual must apply on a form furnished by the regulatory authority and as part of the application must:

- A. State his or her name, address, phone number, sex, date of birth and social security number;
- B. Pay a food protection management certification card fee of fifty-five dollars or thirty-five dollars if proof of completion of a recognized course is presented;
 - C. Sign the application;
- D. Individuals can challenge the Food Protection Management Course examination if proof of completion of a recognized Food Protection Management Certification Program is presented and required course registration and fee are submitted. An eighty-five percent proficiency is required on the examination to successfully pass the challenge. A person not successful in the challenge must then register and pay the fee to attend the Food Protection

Certification Course.

E. All fees paid to the regulatory authority under this chapter are nonrefundable.

9.12.250 Renewal - Fee.

SHALL BE REVISED TO READ AS FOLLOWS:

A food protection management certification card must be renewed at the end of three years and within sixty days from expiration or the expiration specified on other recognized certification. If no expiration date is specified, the certification shall expire three years from date of issuance.

5. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Article VI. (Food Care), Section 9.12.310 (Frozen desserts), Section 9.12.340 (Ground Meat Advisory), and Section 9.12.400 (Transportation) of the El Paso Municipal Code shall be and hereby are amended to revise, add or delete existing sections and/or subsections as follows:

9.12.310 Frozen desserts. (A)

SHALL BE REVISED TO READ AS FOLLOWS:

A. All frozen dessert, mix, imitation frozen dessert and nondairy frozen dessert possessed with intent to sell, offered for sale or sold, or stored by an establishment must comply with the Texas Health and Safety Code, Chapter 440, Frozen Desserts Manufacturer Licensing Act and Texas Administrative Code Title 25 Chapter 217 Milk and Dairy-Frozen Desserts Manufacturing Specifications and Requirements, a copy of which is on file in the city clerk's office.

9.12.340 Ground Meat Advisory.

SHALL BE REVISED TO READ AS FOLLOWS:

- A. Signs in English and Spanish requiring ground meat be served fully cooked will be conspicuously posted for consumers to read.
- B. Signs in English shall read, "El Paso's City Ordinance and Texas Law require that ground meat (fish, beef, pork, poultry, etc.) must be consumed fully cooked due to potential health risks associated with consumption of these products when not fully cooked. If you have special health risks consult your physician."
- C. Signs in Spanish shall read, "La ley de la ciudad de El Paso, Texas requiere que las carnes molidas (pescado, res, puerco, pollo, etc.) sean consumidas bien cocidas debido a riesgos asociados si estos alimentos no estan bien cocidos. Si tuviese alguna duda consulte a su medico."
- D. Signs shall be made available by the regulatory authority for the cost of printing and handling.
- E. An establishment shall not offer ground meat cooked other than well-done for human consumption, unless specifically requested by the consumer.

9.12.400 Transportation. (C) and (D)

SHALL BE ADDED AS FOLLOWS:

C. All vehicles transporting food requiring hot holding must be provided with hot

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holding units capable of maintaining the internal temperature of the food product at sixty degrees Celsius or one hundred and forty degrees Fahrenheit or above.

- D. Hazard Analysis Critical Control Point plans shall be submitted to the regulatory authority for review and approval for any establishment transporting food from one location to another. Catering to private social events is exempt from this requirement.
- 6. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Article VII. (Equipment and Utensils), Section 9.12.490(Cleaning and sanitization--Clean-in-place--Equipment) of the El Paso Municipal Code shall be and hereby is added as follows:

9.12.490 Cleaning and sanitization-Clean-in-place Equipment. SHALL BE ADDED AS FOLLOWS:

Rinsing, spraying or swabbing with a chemical sanitizing solution of twice the strength required for that particular sanitizing solution when used in immersion shall be used for clean-in-place equipment. Chemicals used for sanitization shall not have concentrations higher than the maximum permitted on the label specifications.

7. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Article VIII. (Sanitary Facilities and Controls), Section 9.12.600 (Handwashing – Lavatory facilities) of the El Paso Municipal Code shall be and hereby is amended to add a subsection as follows:

9.12.600 Handwashing – Lavatory facilities (D) SHALL BE ADDED AS FOLLOWS:

- D. Dispensers designed for soap and towels shall be provided at all handwashing lavatories.
- 8. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Article X. (Miscellaneous Regulations), Section 9.12.800 (Mobile food establishment) and Section 9.12.810 (Temporary and recurrent food establishments) of the El Paso Municipal Code shall be and hereby are amended to revise, add or delete existing sections and/or subsections as follows:

9.12.800 Mobile food establishment. (B), (C), (D) and (E) SHALL BE REVISED AND ADDED TO READ AS FOLLOWS:

- B. Mobile food establishments handling exposed food must submit potable water samples at time of application for analysis to a Texas Department of Health certified laboratory.
- C. Mobile food establishments handling potentially hazardous foods must operate from a central preparation facility. The central preparation facility must have all necessary equipment to handle the approved activities. Central preparation facilities shall maintain a score of eighty-five percent or better.
 - D. Mobile food establishments shall not become stationary to await customers.
 - E. Mobile food establishments shall obtain and affix a mobile food establishment

sticker from the regulatory authority at time of site assessment.

9.12.810Temporary and recurrent food establishments.

SHALL BE REVISED TO READ AS FOLLOWS:

- 9.12.810 Temporary, seasonal and recurrent food establishments.
 - A. Comply with the requirements of this Chapter.
- 1. A temporary, seasonal or recurrent establishment shall comply with the requirements of this chapter except as otherwise provided in this section. The regulatory authority may impose additional requirements to protect against health hazards relating to the conduct of temporary, seasonal or recurrent-establishments, may prohibit the sale of some or all potentially hazardous foods, and when no health hazard will result, may waive or modify requirements. Recurrent and seasonal establishments are held to a higher standard than a temporary establishment. At a minimum, temporary establishments will meet the requirements as set forth in the Texas Food Establishment Rules.
- 2. All food temperature requirements shall be met as contained in §229.164 (k)-(n) of the Texas Food Establishment Rules for temporary, seasonal and recurrent establishments.
 - **B.** Restricted Operations.
- 1. These provisions are applicable whenever a temporary, seasonal and recurrent establishment is permitted, under the provisions of subsection A of this section, to operate without complying with all of the requirements of this chapter.
 - 2. Food and Food Handling.
- a. All foods for use in temporary, seasonal or recurrent establishments must be prepared in an establishment approved by the regulatory authority.
- b. The manager, owner or person in charge of a seasonal or recurrent establishment must acquire a valid Food Protection Managers card. Other employees in a seasonal or recurrent establishment handling food must obtain a valid Food Handlers card.
- c. Receipts for all foods used in temporary, seasonal or recurrent establishments must be made available to the regulatory authority upon request. Foods must be purchased from an approved source.
- d. Preparation of potentially hazardous foods in temporary, seasonal or recurrent establishments as close to the time of event as possible is required.
- e. Ice that is consumed or that contacts food shall have been made under conditions meeting the requirements of this chapter. The ice shall be obtained only in chipped, crushed or cubed form and in single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. Ice shall be held in these bags until it is dispensed in a way that protects it from contamination.

C. Equipment.

- 1. Equipment in temporary, seasonal and recurrent establishments shall be located and installed in a way that prevents food contamination and that also facilitates cleaning the establishment. Equipment and utensils shall be in good condition. The use of utensils not capable of being effectively washed and sanitized is prohibited.
- 2. Food contact surfaces of equipment in temporary, seasonal or recurrent establishments shall be protected from contamination by consumers and other sources. Where necessary to prevent contamination, effective shields for such equipment shall be provided.

- 3. Temporary, seasonal and recurrent establishments must provide hot and cold holding equipment for food. This equipment shall be adequate in number and capacity to provide food temperatures as specified under §229.164 (k)-(n) of the Texas Food Establishment Rules.
- 4. Recurrent and seasonal establishments must provide a three-compartment sink for washing, rinsing and sanitizing equipment and utensils as needed.
- 5. A convenient handwashing lavatory shall be available in recurrent and seasonal establishments for employee handwashing. This facility shall consist of hot and cold running potable water, soap and individual paper towels for recurrent and seasonal establishments. Temporary establishments must meet the requirements for handwashing contained in the Texas Food Establishment Rules.
- D. Recurrent, seasonal and temporary establishments shall provide only single service articles for use by the consumer.
- E. Recurrent and seasonal establishments shall provide enough hot and cold running potable water in the establishment for food preparation, washing, rinsing and sanitizing utensils and equipment, and handwashing. A heating facility located on the premises and capable of producing enough hot water for these purposes shall be provided. Recurrent and seasonal establishments will be required to submit potable water samples for analysis to a Texas Department of Health certified laboratory prior to permitting. Temporary establishments must meet the requirements in the Texas Food Establishment Rules for potable water.
- F. All sewage, including liquid waste, generated from temporary, seasonal or recurrent establishments shall be disposed of through an approved sanitary sewage system that is constructed, maintained and operated according to law.
- G. Adequate size and number of waste containers to hold all the garbage and refuse that accumulates from temporary, seasonal or recurrent establishments is mandatory. Containers must be easily cleanable, leak proof and nonabsorbent. Waste containers inside these establishments must be provided with a tight-fitting lid.
- H. Booth requirements for temporary, seasonal and recurrent establishments handling exposed food are as follows:
- 1. Walls and ceilings must be made of canvas, wood or other material that protects the interior of the booth from the weather.
- 2. Floors must be constructed of concrete or machine laid asphalt for seasonal and recurrent establishments. Temporary establishments must follow the Texas Food Establishment Rules relating to floors.
- 3. Outer openings of temporary, seasonal or recurrent establishments shall be protected against entry of insects and rodents by use of 16 mesh per inch screens, properly designed and installed air curtains or other effective means.
- I. All persons engaged in food handling in these establishments shall comply with all personnel requirements as set forth in the Texas Food Establishment Rules.
- J. All temporary, seasonal and recurrent establishments handling potentially hazardous foods must operate from a central preparation facility. The central preparation facility must have all necessary equipment to handle the approved activities and maintain a score of eighty-five percent or better. The central preparation facility must be constructed and operated in compliance with federal, state and city regulations.
 - K. All violations in the case of temporary, seasonal or recurrent establishments

must be corrected within specified time. If violations are not corrected within such specified time the establishment shall immediately cease food operations.

- L. The regulatory authority shall restrict the number of establishments operating out of a central preparation facility if such operations pose public health concerns.
- 9. That Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments), Article XI. (Enforcement), Section 9.12.850 (Inspection Form Public disclosure of findings), Section 9.12.860 (Violation Correction Time limits) and Section 9.12.890 (Violation—Penalty) of the El Paso Municipal Code shall be and hereby are amended to revise, add or delete existing sections and/or subsections as follows:

9.12.850 Inspection – Form – Public disclosure of findings. SHALL BE REVISED TO READ AS FOLLOWS:

The regulatory authority shall record the findings of the inspection on an inspection form. A copy of the completed inspection form shall be furnished to the owner, manager or person in charge of the establishment at the time of inspection. The completed inspection form is a public document and shall be made available for public disclosure to any person who requests it according to law.

9.12.860 Violation – Correction - Time limits. (B) SHALL BE REVISED TO READ AS FOLLOWS:

B. In the case of temporary, seasonal or recurrent food establishments, all violations shall be corrected as soon as possible, not to exceed twenty-four hours. If violations are not corrected within twenty-four hours the establishment shall immediately cease food operations until authorized to resume by the regulatory authority.

9.12.890 Violation – Penalty. (B) SHALL BE DELETED.

10. Except as expressly herein amended, all other provisions of Title 9 (Health and Safety), Chapter 9.12 (Food and Food Handling Establishments) of the El Paso Municipal Code, shall remain in full force and effect.

PASSED AND APPROVED this 23rd day of March, 2004.

(ALL SIGNATURES FOLLOW ON THE NEXT PAGE)

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CITY OF EL PASO

ATTEST:	Joe Wardy Mayor
Richarda Duffy Momsen City Clerk	
APPROVED AS TO FORM: Teresa Garcia Assistant City Attorney	Jorge Magaña, M.D., F.A.A.P., Director City County Health & Environmental District Board of Health:
	John M. Tune, M.D. Chairperson